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10/16/98

The National Security Archive

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October 12, 1998

Lee S. Strickland
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

RE: FOIA Appeal
Case No. F-92-1802

To Whom It May Concern:

This letter constitutes an administrative appeal under the Freedom of Information Act, 5 U.S.C. Sec. 552 (a)(6). By letter dated September 10, received by us September 17, 57 CIA reports were released to us in part with deletions based on FOIA exemptions (b)(1) and (b)(3). Information was also denied by CIA because it was considered "not relevant" to the original request. An undisclosed number of documents were denied in full based on the same FOIA exemptions. Because Ms. Tina Rosenberg, the original requester, has since left the National Security Archive, I have been given authority to appeal on her behalf.

I very much appreciate CIA's diligent search and review of the documents. However, with respect to the material withheld in full on the basis of (b)(1), I ask that you undertake a line-by-line review to ensure that current classification is indeed warranted and that all reasonably segregable portions are released. It seems very likely the documents denied in full and those denied in part contain factual and descriptive information which can be reasonably segregated for release.

Regarding the material withheld on the basis of (b)(3), the mere fact that names of officials or other identifying Agency information, for example, may be mentioned in the documents or sections denied does not constitute a basis for denying release of the entire section or complete document. Your agency could reasonably delete information on truly sensitive sources and methods while declassifying other portions of the documents. In the case of large sections that have been deleted and those documents denied in full, CIA has made no apparent effort to release reasonably segregable portions of the document in this manner, as required by FOIA.

Third, regarding those sections excised from the documents produced and those documents determined not to be in the "scope" of the request, I ask that the CIA review the language of the original request with the reference to the guidelines for "scoping" FOIA requests as described in the U.S. Department of Justice Office of Information and Privacy, *OIP Guidance* "Determining the Scope of a FOIA Request" as released in *FOIA Update*, Fall 1995. First, I would like to remind you of the language used in the original request. The overall subject matter of the request concerned Soviet and Warsaw Pact pressure placed on the Polish government in 1980-81 to crack down on Solidarity. For CIA's convenience and to expedite the processing of this request, the National Security Archive gave three specific areas of interest to help narrow the document search, which included: movements of Soviet or Warsaw Pact troops or military equipment inside or near Poland during the years 1980 and 1981, discussions of Soviet intentions

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regarding a possible Soviet or Warsaw Pact invasion of Poland and Polish responses, and United States reaction to the threat of a possible Soviet or Warsaw Pact intervention in Poland in 1980 and 1981. However, when scoping this request, please keep in mind that these are only examples of the main point of interest; the larger subject of interest is documents reporting, regarding, discussing, or analyzing Soviet and Warsaw Pact pressure placed on the Polish government in 1980-81.

According to the Department of Justice's OIP Guidance on "scoping" a request. The guideline that most contradicts the use of the "not relevant" (N-R) exemption invoked when processing this request, reads as follows:

> *'Scoping' within a document page.* First and foremost, information should not be determined to be beyond the scope of a request on less than a page-by-page basis. If any of the information on a page of a document falls within the subject matter of a FOIA request, then that entire page should be included within the scope of that request.

Taking this guidance into account, *all but one* of the sections excised because they were "not relevant" should be included. Nearly every "N-R" excision occurs on a page where other information is included, thus making the blacked-out information obviously relevant and within the scope of the request. These deleted sections add vital context and background to help illustrate the CIA's understanding of the situation in Poland. Because so many of the issues in analyzing developments and creating policy are complex and often unsuspectingly intertwined, processing a request with the widest reasonable scope is important to scholars. In addition, the simple reason that the CIA determined the information important enough to be included in this finished intelligence means that it is more than likely that this same information will be relevant to scholars attempting to fully understand the creation and dynamic nature of U.S. policy toward both Poland and the Communist bloc. The excised information may be especially enlightening to scholars attempting to understand CIA's internal decision making and its role in the ultimate creation of policy. It is impossible to understand how or why CIA made a particular decision without first seeing and understanding the information that this ultimate decision was based on; therefore, it is important to retrieve and collect as much information as possible.

The OIP Guidance notwithstanding, there are a few examples of obvious misuse of the "not relevant" exemption. Within the 23 December 1981 report, "Poland: Coping with the Crisis," the summary section of the document (in italics) is considered relevant. The more detailed, explicit section of information immediately following, from which the summary has been created, is excised as "not relevant." If the summary statement contains relevant information, the information it is summarizing is inherently relevant. In the 30 March 1981 Intelligence Report, "Poland: Signs of Soviet Military Activity," page three is not considered to be relevant. It seems highly unlikely, nearly impossible, that information with this heading would not fall under or at least be related "in some substantive way" (as is the suggested test for scoping given in the OIP Guidance mentioned above) to the portion of the Archive's original request for "any and all documents relating in whole or in part to movements of Soviet or Warsaw Pact troops or military equipment inside or near Poland during the years 1980 and 1981." The subject heading of this page is almost identical to the information requested. These are only two examples of the serious misapplication of the scoping guidelines that are found throughout the documents CIA has released.

For the unspecified number of documents that you have not released or those denied in part due to the (b)(1) and (b)(3) exemptions, I would urge CIA to reconsider their classification in light of the passage of time. Nearly two decades have passed since these documents were

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written. With the United States ending the Cold War victoriously and the subsequent dissolution of Communist governments throughout Eastern Europe and the world, the sensitive nature of and subsequent need for protecting this information no longer exist. These former Communist states are no longer our enemies; instead, they have become our friends and economic partners. Poland, the subject of this request, has even become a military ally *within* NATO. The collapse of Cold War animosities, and the Cold War system in general, should be followed by the collapse of the system of secrecy that continues to surrounding the U.S. record of such unique Cold War events.

More importantly, with the collapse of Communist governments, the archives of these governments are open for the first time in history. The past 8 years have been a "golden age" for scholars and historians, uncovering revelations from former Soviet bloc archives on every major Cold War crisis and event. With a particular eye to the events in Poland in 1980 and 1981, documents that have been discovered and released so far include: transcripts of high-level Central Committee and Politburo meetings; records of Solidarity meetings in Gdansk; personal letters from Leonid Brezhnev to Erich Hoenecker; transcripts of telephone conversations between Polish general Wojciech Jaruzelski and Leonid Brezhnev, and even telegrams from America's high-level Polish agent Ryszard Kuklinski (Jack Strong). In addition to these and other similar high-level government records, published memoirs from Polish general Jaruzelski, Soldarity leader Lech Walesa, the KGB station Chief in Warsaw, and U.S. foreign policy advisor Zbigniew Brzezinski have served as excellent sources for understanding the larger picture of decision making on all four sides of the conflict.

Because the events of 1980 and 1981 in Poland are important for understanding Cold War animosities and confrontations in general, and so essential for understanding the eventual collapse of Soviet power throughout Eastern Europe, the National Security Archive and other institutions have brought scholars together with former communist government officials to create and record an "oral history" of the events in Poland. These "oral history" conferences have helped tremendously to increase the amount of publicly available documentation from the period and to draw insights into decision making in the Eastern bloc. Historians now have a near complete conception of the events from an Eastern perspective. The continued secrecy of United States' government information, however, is one of the last stumbling blocks before scholars and historians can piece together a full picture of the events of 1980 and 1981.

In conclusion, in order to expedite and simplify the FOIA process, I would be more than happy to help redefine or hone the scope of FOIA requests or answer any questions as they arise. Any steps that can be made to ease your responsibilities while continuing to ensure that the Archive receives the maximum amount of information possible would be embraced by this office. Thank you very much for your time and consideration. I look forward to receiving your reply.

Cordially,

[redacted] (b)(6)

Gregory F. Domber
Research Assistant

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